

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF THE SPECIAL MASTERS
No. 03-979V

Filed: February 16, 2010
Filed Redacted: March 12, 2010

MICHELLE CARR, parent of	*
JACOB CARR, a minor,	*
	*
Petitioner,	*
	*
v.	*
	*
SECRETARY OF THE DEPARTMENT OF	*
HEALTH AND HUMAN SERVICES,	*
	*
Respondent.	*
	*

DECISION¹

VOWELL, Special Master:

The above-named petitioner² filed a Short-Form Autism Petition For Vaccine Compensation on May 5, 2003. Thereafter, petitioner failed to file many of the medical records and a "Statement of Compliance with Phase One Medical Records Production" as ordered by the undersigned on May 15, 2008.³ I granted petitioner's attorney's motion to withdraw from this case on September 1, 2009, and on September 9, 2009, I

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). In accordance with Vaccine Rule 18(b), I have redacted footnote 2 of this decision.

² It has come to my attention that Jacob's father, Stephen Gregory Carr, now has full legal custody of Jacob. Mr. Carr is not a petitioner in this case. Because of his status as Jacob's legal guardian and Ms. Carr's unresponsiveness to communications from the court and her prior attorney, Mr. Carr is periodically informed of the status of this case on Jacob's behalf. Mr. Carr is reminded that dismissal of Ms. Carr's case may preclude Jacob's ability to recover compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10, *et seq.* (2006). By order of the court, a courtesy copy of this order shall also be sent to Stephen Gregory Carr at the following address:

[Redacted]

³ I note that the medical records filed on August 28, 2008, which include a vaccination record and an evaluation by a speech pathologist unrelated to diagnosis of an ASD, are insufficient to meet the requirements of my May 15, 2008 order.

ordered petitioner to provide a status report to the court. Petitioner failed to respond to that order, and failed to respond to a subsequent order, issued November 17, 2009, to provide a status report. On December 30, 2009, I ordered petitioner to file the outstanding medical records in this case or show cause by January 29, 2010, why this case should not be dismissed for failure to prosecute. Petitioner failed to respond to that order as well.

The undersigned warned petitioner that noncompliance with court orders would not be tolerated and could lead to dismissal of petitioner's claim. See Order filed November 17, 2009; Order filed December 30, 2009. Further, the undersigned warned petitioner in the court's December 30, 2009 order, that "[f]ailure to follow court orders, as well as failure to file medical records or an expert medical opinion, shall result in dismissal of petitioner's claim." Order filed December 30, 2009 (citing *Tsekouras v. Sec'y, HHS*, 26 Cl. Ct. 439 (1992), *aff'd per curiam*, 991 F.2d 810 (Fed. Cir. 1993); *Sapharas v. Sec'y, HHS*, 35 Fed. Cl. 503 (1996); Vaccine Rule 21(b)).

Petitioner has failed to file sufficient medical records or the opinion of an expert to support petitioner's claim in the instant case.⁴ Additionally, petitioner has failed to respond to the court's orders in the instant case. Accordingly, pursuant to Vaccine Rule 21(b), the undersigned dismisses petitioner's claim for failure to prosecute, failure to comply with the Vaccine Rules, and failure to comply with the court's orders. The Clerk shall enter judgment accordingly.

IT IS SO ORDERED.

Denise K. Vowell
Special Master

⁴ The Vaccine Act provides that a special master cannot find that a petitioner has proven her case by a preponderance of the evidence based upon "the claims of a petitioner alone, unsubstantiated by medical records or medical opinion." 42 U.S.C. § 300aa-13(a). Petitioner's failure to file medical records has prevented the undersigned from addressing any aspect of the merits of petitioner's claim.